

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SANDRA M. HARTWIG,

Plaintiff,

v.

CV No. 19-1017 CG

ONPOINTE,

Defendant.

**ORDER GRANTING MOTION TO PROCEED IN FORMA PAUPERIS
AND DIRECTING SERVICE**

THIS MATTER comes before the Court on Plaintiff Sandra M. Hartwig's *Application to Proceed in District Court Without Prepaying Fees or Costs* (the "Application"), (Doc. 3), filed October 31, 2019.

I. Application to Proceed In Forma Pauperis

The statute for proceedings *in forma pauperis*, 28 U.S.C. § 1915(a), provides that the Court may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that includes a statement of all assets the person possesses and that the person is unable to pay such fees.

When a district court receives an application for leave to proceed in forma pauperis, it should examine the papers and determine if the requirements of [28 U.S.C.] § 1915(a) are satisfied. If they are, leave should be granted. Thereafter, if the court finds that the allegations of poverty are untrue or that the action is frivolous or malicious, it may dismiss the case[.]

Menefee v. Werholtz, 368 F. App'x. 879, 884 (10th Cir. 2010) (unpublished) (citing *Ragan v. Cox*, 305 F.2d 58, 60 (10th Cir. 1962)). "[A]n application to proceed *in forma pauperis* should be evaluated in light of the applicant's present financial status." *Scherer v. Kansas*, 263 F. App'x. 667, 669 (10th Cir. 2008) (unpublished) (citing *Holmes v.*

Hardy, 852 F.2d 151, 153 (5th Cir.1988)). “The statute [allowing a litigant to proceed *in forma pauperis*] was intended for the benefit of those too poor to pay or give security for costs” See *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 344 (1948).

While a litigant need not be “absolutely destitute,” “an affidavit is sufficient which states that one cannot because of [her] poverty pay or give security for the costs and still be able to provide [her]self and dependents with the necessities of life.” *Id.* at 339.

Ms. Hartwig signed an affidavit declaring that she is unable to pay the costs of these proceedings and stated: (i) her average monthly income amount during the past 12 months was \$2,000.00; (ii) her monthly expenses total \$2131.76; (iii) she has \$700.00 in cash or in a bank account; and (iv) she has \$150.00 in credit card debt.

The Court grants Ms. Hartwig’s Application because she signed an affidavit declaring that she is unable to pay the costs of these proceedings and because her low monthly income is slightly less than her monthly expense.

II. Service on Defendant

Ms. Hartwig is proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915 which provides that the “officers of the court shall issue and serve all process, and perform all duties in [proceedings *in forma pauperis*]”. 28 U.S.C. § 1915(d). Because Ms. Hartwig is authorized to proceed *in forma pauperis* under 28 U.S.C. § 1915, the Court will order the Clerk of the Court to notify Defendant, at the address provided by Ms. Hartwig in her *Complaint* (the “Complaint”), (Doc. 1), filed October 31, 2019, that an action has been commenced and request that Defendant waives service pursuant to Fed. R. Civ. P. 4(d).

IT IS THEREFORE ORDERED that:

(i) Plaintiff Sandra M. Hartwig's *Application to Proceed in District Court Without Prepaying Fees or Costs*, (Doc. 3), filed October 31, 2019, is **GRANTED**.

(ii) The Clerk of the Court shall notify Defendant that an action has been commenced and request that Defendant waives service pursuant to Fed. R. Civ. P. 4(d). The notice shall include a copy of Ms. Hartwig's Complaint. The Clerk shall mail the notice, waiver and a copy of the Complaint to Defendant at the following address:

Onpointe (AKA APM Therapy)
8725 Alameda Park Drive NE
Albuquerque, New Mexico 87113

If Defendant does not return the waiver within 45 days after the request is sent, then the United States Marshal shall serve a copy of the Summons and Complaint on Defendant.

IT IS SO ORDERED.



THE HONORABLE CARMEN E. GARZA
CHIEF UNITED STATES MAGISTRATE JUDGE